



# OLR RESEARCH REPORT

September 13, 2012

2012-R-0382

## SUMMARY OF JONES VS. EAST HAVEN

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This report summarizes the opinion of the Second Circuit Court of Appeals in *Jones v. Town of East Haven*, --- F.3d ----, 2012 WL 3104523 (2<sup>nd</sup> Cir. 2012). The complete opinion is available on the court's [website](#).

### SUMMARY

In 1997, Malik Jones, a 21-year old black man, was shot and killed by Officer Robert Flodquist of the East Haven Police Department (EHPD) following police pursuit of Jones by car from East Haven to New Haven. Jones's mother filed suit against Officer Flodquist, another officer, and the town of East Haven, alleging numerous civil rights violations. After trial in a federal district court, a jury found in favor of the officers, but found the town liable and awarded damages to Jones's estate.

East Haven appealed, claiming that the estate's evidence was insufficient to establish municipal liability. Specifically, the town argued that the plaintiff's evidence was legally insufficient to demonstrate that the town had a custom, policy, or usage of deliberate indifference towards racial minorities which caused Jones's death. The Second Circuit Court of Appeals agreed that the evidence was insufficient and reversed the judgment.

In summary, the court found that the evidence offered by the plaintiff "showed two instances, or at the most three, over a period of several years in which a small number of officers abused the rights of black

people, and one incident in which an officer indicated a disposition to abuse the rights of black people.” The court found that this evidence fell “far short” of meeting the standards for municipal liability. The court noted that “any instance in which police officers abuse people’s rights is intolerable,” but concluded that the plaintiff’s evidence did not support imposing liability on the town (*Jones* at 21-22).

## **FACTS AND PROCEDURAL HISTORY**

The following facts are drawn from the Second Circuit opinion. Leading up to the shooting, Jones was driving in East Haven with another black man as a passenger, when Officer Flodquist began pursuing the car. At one point, Jones made a u-turn back toward New Haven. Another EHPD officer joined the pursuit. After Jones drove back to New Haven, the officers’ cars eventually blocked Jones’s path. Flodquist approached the driver’s side of the vehicle and used the butt of his gun to break the driver’s window.

At the trial, there was conflicting testimony on what happened, and in what sequence, between that point and the shooting. Witnesses disagreed as to whether Flodquist fired four or five shots. They also disagreed as to when he fired the first shot—either before or after Jones’s car began moving backward in a circular path. It was undisputed that neither Jones nor his passenger was armed.

The jury found:

1. that Flodquist used excessive force against Jones, but was entitled to qualified immunity;
2. in Flodquist’s favor on various state law claims;
3. that another officer at the scene did not violate Jones’s constitutional rights by failing to intervene to protect him from Flodquist’s excessive use of force; and
4. the town liable, as Jones’s killing was due to East Haven’s unconstitutional custom, policy, or usage of deliberate indifference against racial minorities.

After the trial, the town renewed its motion for judgment as a matter of law. The district court denied the motion, finding that the plaintiff’s evidence was sufficient to support municipal liability under one of three theories the plaintiff had argued at trial — a custom, policy, or usage of

deliberate indifference to abuse of the constitutional rights of black people and other people of color, which resulted in the violation of Jones's constitutional rights.

The town then appealed to the Second Circuit Court of Appeals.

## **STANDARD OF REVIEW**

As explained in the court's opinion, the federal rules of civil procedure provide that a court may grant judgment against a party as a matter of law upon finding that "a reasonable jury would not have a legally sufficient evidentiary basis to find for the party . . ." Fed. R. Civ. P. 50(a)(1). The court must consider the evidence in the light most favorable to the non-movant and "give that party the benefit of all reasonable inferences that the jury might have drawn in his favor from the evidence" (*Jones* at 12-13) (quoting *Zellner v. Summerlin*, 494 F.3d 344, 371 (2d Cir. 2007)).

## **SECTION 1983 AND MUNICIPAL LIABILITY**

42 U.S.C. § 1983 allows for civil liability against anyone who:

under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws . . .

The court discussed the basic standard for imposing municipal liability under section 1983, as articulated in the U.S. Supreme Court's decision in *Monell v. Department of Social Services*, 436 U.S. 658 (1978). Under *Monell*, a municipality can be liable under section 1983 if its custom, policy, or usage causes a deprivation of someone's rights under federal law; absent such a custom, policy, or usage, a municipality is not liable for its employees' torts (*Jones* at 13) (citing *Monell* at 690-91).

The court cited and discussed other Supreme Court and Second Circuit cases which have put a further gloss on the *Monell* standard. For example, the court cited Second Circuit cases for the proposition that:

isolated acts of excessive force by non-policymaking municipal employees are generally not sufficient to demonstrate a municipal custom, policy, or usage, [but] such acts would justify municipal liability if, for example, they were done pursuant to municipal policy, or were sufficiently widespread and persistent to support a finding that they constituted a

custom, policy, or usage of which supervisory authorities must have been aware, or if a municipal custom, policy, or usage would be inferred from evidence of deliberate indifference of supervisory officials to such abuses (*Jones* at 13-14) (citations omitted).

## **HOLDING**

At trial, the plaintiff had offered testimony on at least six incidents in support of her claim that East Haven had a custom, policy, or usage of deliberate indifference to the rights of black people. The evidence included testimony on the following matters:

1. demographic information about the town itself and the police department;
2. specific incidents involving alleged improper or discriminatory action by the police during investigations (e.g., incidents involving alleged racial profiling, racist comments, and sexual assault of black victims);
3. T-shirts worn by officers while off-duty and playing softball, which depicted two white officers holding two white suspects on the hood of a police car and the phrase “Boyz on the Hood;” and
4. an independent investigation of the Jones shooting itself.

The Second Circuit Court of Appeals concluded that this evidence was insufficient as a matter of law to support a reasonable finding that the plaintiff’s loss was attributable to a custom, policy, or usage of the town. The court noted that:

the evidence, construed (as it must be) in the manner most favorable to the Plaintiff, unquestionably showed instances of reprehensible and at times illegal and unconstitutional conduct by individual officers of the EHPD. But such a showing is not a sufficient basis for imposing liability on the municipality. . . . The evidence failed to show a pattern of abusive conduct (or expressions of inclination toward such abusive conduct) among officers, so widespread as to support an inference that it must have been known and tolerated by superiors. It failed to show sufficient instances of tolerant awareness by supervisors of abusive conduct to support an inference that they had a policy,

custom or usage of acquiescence in such abuse. Nor was there evidence that supervisors communicated to officers an attitude of indifference to abuse so as to give the officers a sense of liberty to abuse rights (*Jones* at 16-17).

The court held that East Haven was entitled to judgment as a matter of law, and remanded the case to the district court with instructions to vacate the judgment in favor of the plaintiff and enter judgment in the town's favor.

## **ANALYSIS**

The court reviewed the six incidents individually, finding that some gave little or no support to the plaintiff's case. For example, one incident involved Flodquist's pursuit and shooting of a suspect. The court found there was no evidence to link the shooting to the man's race and no reason for police supervisors to believe Flodquist's conduct was motivated by bias or unconstitutional (*Jones* at 17-18). Another incident involved a woman's testimony of her belief that she was subject to a traffic stop due to racial bias; the court described her testimony as "unsupported speculation" and found "no objective evidence giving any support to her speculation" (*Id.* at 18-19).

Another incident involved alleged racially bigoted remarks officers made to a white suspect (indicating he would have been treated worse if he were black). The court found there was "no showing that any [EHPD] policy-maker was aware of those remarks" (*Jones* at 19).

Regarding the killing of Jones, the court found that, even accepting the plaintiff's version of the shooting as true (that Flodquist shot Jones before the car began moving in reverse, thus when Flodquist would have no reason to believe himself in danger), there was no basis to conclude that Flodquist's supervisory officials did not accept as true his plausible alternate version of the facts. The court further noted that:

As it is uncontested that Malik Jones was fleeing the police and was driving erratically and dangerously, Flodquist's supervisors had no reason to doubt his version of the facts. . . . As a jury could not reasonably find evidence in the trial below suggesting that the state investigation found fault with Flodquist's conduct, Plaintiff cannot contend that this incident supports an inference that Flodquist's superiors failed to discipline him after being on notice that he used excessive force against a black man (*Jones* at 19-20).

Another incident discussed in the opinion involved a woman's allegations that, following her arrest, she was subjected to repeated racist statements and sexually assaulted, among other abuses. The court found that this testimony, accepted as true, "unquestionably depicted serious extreme hostility on the part of several officers to black people." However, there was no evidence that the department's superiors failed to take appropriate action after learning of these allegations (*Jones* at 20).

The court found that the only evidence supporting an inference of EHPD supervisors' discriminatory attitude toward black people was the T-shirt incident—specifically, evidence showing that the chief "learned that officers playing baseball had been wearing a T-shirt that exhibited an attitude that was disrespectful of black people and he took no action to put a stop to it."

The court found this T-shirt evidence insufficient to support the plaintiff's case. According to the court, while the T-shirts' message "was disrespectful of black people, it did not reveal an inclination" on the officers' part to abuse their rights. It was also not clear at the time that the law would have allowed the chief to order the officers not to wear a T-shirt expressing their personal views while off-duty. (A case decided after the incident, which addressed First Amendment rights of police in another context, would support the chief's authority to do so.) Thus, the court found that "the Chief's failure to take action accordingly did not demonstrate a tolerance for abuse of the rights of black people" (*Jones* at 20-21).

## **DISCUSSION OF U.S. DEPARTMENT OF JUSTICE (DOJ) INVESTIGATION**

In a footnote early in the opinion, the court noted that it was aware of recent reports concerning the DOJ's investigation into the misconduct of EHPD officers and subsequent arrests of four officers on various charges. The footnote stated that:

our ruling on this appeal should not be taken as expressing any view of this court on the question whether the Town of East Haven or its police department discriminated in any way against minorities. A federal appellate court makes no assessment of the true facts. . . . It reviews only the record created by the parties in the course of trial. We conclude . . . that the Plaintiff's evidence presented at trial was insufficient as a matter of law to

establish liability of the Town . . . Whether that is because there is no real discrimination or indifference, or because Plaintiff has simply failed to discover and present evidence of it, is beyond the competence of this court (*Jones* at 2-3).

JO:tjo